

(2), or (3) of this section. After the relevant date for determining an applicant's maximum points, points will be reduced for any changes that negatively affect any evaluation criterion. Applicants will establish their qualifications according to the following:

(1) If the applicant is in a group for which a "B" cut-off notice issued prior to April 21, 2000 its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of the date of the "B" cut-off notice;

(2) If the applicant is in a group for which an "A" cut-off notice issued prior to April 21, 2000 but for which no "B" cut-off notice issued, its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of April 21, 2000;

(3) If the applicant was neither placed on an "A" cut-off list prior to April 21, 2000 nor filed in response to such an "A" cut-off list, it is subject to competition from applications filed within the first filing window, and its maximum technical and non-technical qualifications will be determined as of the close of the first filing window.

[65 FR 36380, June 8, 2000, as amended at 66 FR 15356, Mar. 19, 2001]

**§ 73.7004 Petitions to deny tentative selectee(s).**

(a) For mutually exclusive applicants subject to the selection procedures in subpart K of this part, Petitions to Deny will be accepted only against the tentative selectee(s).

(b) Within thirty (30) days following the issuance of a public notice announcing the tentative selection of an applicant through fair distribution (§ 73.7002) or point system (§ 73.7003) procedures, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition.

Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be 10 days from the filing date for petitions to deny, and the time for filing replies shall be 5 days from the filing date for oppositions.

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, the application will be granted. If the Commission determines that the points originally claimed were higher than permitted, but that there is no substantial and material question of fact of applicant qualifications, it will compare the revised point tally of the tentative selectee to the other mutually exclusive applicants and, either grant the original application or announce a new tentative selectee, as appropriate. If an applicant is found unqualified, the application shall be denied, and the applicant(s) with the next highest point tally named as the new tentative selectee.

**§ 73.7005 Holding period.**

(a) *Assignments/Transfers.* NCE stations awarded by use of the point system in § 73.7003 shall be subject to a holding period. From the grant of the construction permit and continuing until the facility has achieved four years of on-air operations, an applicant proposing to assign or transfer the construction permit/license to another party will be required to demonstrate the following two factors: that the proposed buyer would qualify for the same number of or greater points as the assignor or transferor originally received; and that consideration received and/or promised does not exceed the assignor's or transferor's legitimate and prudent expenses. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (e.g. expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, *etc.*). Costs incurred in operating the station are not recoverable

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(e.g. rent, salaries, utilities, music licensing fees, *etc.*). Any successive applicants proposing to assign or transfer the construction permit/license prior to the end of the aforementioned holding period will be required to make the same demonstrations.

(b) *Technical*. In accordance with the provisions of § 73.7002, an NCE applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed, and can not downgrade service to the area on which the preference is based for a period of four years of on-air operations.

(c) The holding period in this section does not apply to construction permits that are awarded on a non-comparative basis, such as those awarded to non-mutually exclusive applicants or through settlement.

### Subpart L—Digital Broadcast Television Redistribution Control

#### § 73.8000 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Federal Communications Commission, 445 12th St., SW., Reference Information Center, Room CY-A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) The following materials are available for purchase from at least one of the following addresses: Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or at <http://www.global.ihs.com>; or American National Standards Institute, 25 West 43rd

Street, 4th Floor, New York, NY 10036 or at <http://www.webstore.ansi.org/ansidocstore/default.asp>.

(1) ATSC A/52: "ATSC Standard Digital Audio Compression (AC-3)," 1995, IBR approved for § 73.682.

(2) ATSC Doc. A/53B, Revision B with Amendment 1: "ATSC Digital Television Standard," August 7, 2001, IBR approved for § 73.682, except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table 3" in Section 5.1.1. Table 2 and Section 5.1.2 Table 4.

(3) ATSC A/65B: "ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)," March 18, 2003, IBR approved for §§ 73.9000 and § 73.9001.

(4) International Standard ISO/IEC 13818-1:2000(E); "Information Technology " Generic Coding of Moving Pictures and Associated Audio Information: Systems," 2000, IBR approved for § 73.9000.

[68 FR 67603, Dec. 3, 2003, as amended at 69 FR 18803, Apr. 9, 2004]

### Subpart M—Digital Broadcast Television Redistribution Control

SOURCE: 68 FR 67603, Dec. 3, 2003, unless otherwise noted.

#### § 73.9000 Definitions.

(a) *Authorized digital output protection technology* means a technology approved pursuant to the procedures in § 73.9008.

(b) *Authorized recording method* means a recording method approved pursuant to the procedures in § 73.9008.

(c) *Bona fide reseller* means a party regularly engaged, or about to become regularly engaged, in the lawful commercial enterprise of selling, reselling, manufacturing, or assembling demodulators, or products incorporating demodulators, in compliance with this subpart.

(d) *Broadcast flag* means the redistribution control descriptor (`rc_descriptor()`) described in ATSC A/65B: "Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)," (incorporated by reference, *see* § 73.8000).